

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MOHAMMED SABBAGHI,

Petitioner,

v.

JANET A. NAPOLITANO,¹ Secretary, United
States Department of Homeland Security, and
KEITH M. BROWN,² Seattle Field Office Interim
Director, United States Citizenship and Immigration
Services.

Respondents.

No. C08-01641-PET

RESPONDENTS' ANSWER TO
PETITIONER'S PETITION FOR
REVIEW OF FINAL
NATURALIZATION DENIAL

COMES NOW Respondents, Janet A. Napolitano, Secretary, United States Department of Homeland Security, and Keith M. Brown, Seattle Field Office Interim Director, United States Citizenship and Immigration Services (hereinafter collectively referred to as "Respondents"), hereby answers Petitioner Mohammed Sabbaghi's ("Sabbaghi") Petition for Review of Final Naturalization Denial. By answering this Complaint, Respondents do not submit to the jurisdiction of this Court and specifically deny that the Court has jurisdiction to review the denial of Sabbaghi's application for naturalization.

¹ In accordance with Fed. R. Civ. P. 25(d)(1), Janet Napolitano is hereby substituted for Michael Chertoff as a Defendant in this Case.

² In accordance with Fed. R. Civ. P. 25(d)(1), Keith M. Brown is hereby substituted for Julia Harrison as a Defendant in this Case.

1
2
3 **SUBJECT MATTER JURISDICTION**

4 1. Answering the allegations in paragraph one, RESPONDENTS deny that
5 this Court has subject matter jurisdiction over this action pursuant to 8 U.S.C. § 1147(b)
6 [sic], 28 U.S.C. § 1361, and 5 U.S.C. Chapter 7 pursuant to 8 C.F.R. 336.9.706(1) [sic].
7 RESPONDENTS deny that 28 U.S.C. § 1331, alone, without a separate statutory waiver
8 of sovereign immunity (which Sabbaghi does not allege), is sufficient to establish
9 jurisdiction.

10 2. Answering the allegations in paragraph two, RESPONDENTS state that
11 paragraph two comprises Sabbaghi's characterization of this action and conclusions of
12 law for which no admission or denial is required. Insofar as a response may be deemed
13 necessary, RESPONDENTS deny generally and specifically the allegations of paragraph
14 two.

15 **VENUE**

16 3. Answering the allegations in paragraph three, RESPONDENTS lack
17 sufficient information or knowledge to form a belief as to the truth of the matters asserted
18 therein, and on that basis deny the remaining allegations of paragraph three.

19 **PARTIES**

20 4. Answering the allegations in paragraph four, RESPONDENTS admit that
21 Sabbaghi is a Lawful Permanent Resident of the United States of America, who has, at
22 least in the past, been a resident of King County. To the extent any further response is
23 required, RESPONDENTS, and on that basis deny the remaining allegations of
24 paragraph four.

25 5. Answering the allegations in paragraph five, RESPONDENTS admit that
26 Janet A. Napolitano is the Secretary of the United States Department of Homeland
27 Security and that she is responsible for the implementation of immigration laws and the
28 delegation of authority to administer immigration laws to the United States Citizenship
and Immigration Service. To the extent any further response is required,
RESPONDENTS state that paragraph five comprises Sabbaghi's characterization of this

1
2
3 action and conclusions of law for which no admission or denial is required. Insofar as a
4 response may be deemed necessary, RESPONDENTS deny generally and specifically the
5 allegations of paragraph five.

- 6 6. Answering the allegations in paragraph six, RESPONDENTS admit that
7 a. Keith M. Brown is the Seattle Field Office Interim Director of the United States
8 Citizenship and Immigration Services. To the extent any further response is required,
9 RESPONDENTS state that paragraph six comprises Sabbaghi's characterization of this
10 action and conclusions of law for which no admission or denial is required. Insofar as a
11 response may be deemed necessary, RESPONDENTS deny generally and specifically the
12 allegations of paragraph seven.

13 **FACTS**

- 14 7. Answering the allegations in paragraph seven, RESPONDENTS deny
15 generally and specifically the allegations of said paragraph.

16 **EXHAUSTION**

- 17 8. Answering the allegations in paragraph eight, RESPONDENTS state that
18 paragraph eight comprises Sabbaghi's characterization of this action and conclusions of
19 law for which no admission or denial is required. Insofar as a response may be deemed
20 necessary, RESPONDENTS deny generally and specifically the allegations of paragraph
21 eight.

22 **CAUSE OF ACTION**

- 23 9. Answering the allegations in paragraph nine, RESPONDENTS admit that
24 8 U.S.C. § 1421(c), 8 C.F.R. § 310(b) & 336.9(a)-(d) allows de novo judicial review of a
25 final naturalization determination. To the extent any further response is required,
26 RESPONDENTS state that paragraph nine comprises Sabbaghi's characterization of this
27 action and conclusions of law for which no admission or denial is required. Insofar as a
28 response may be deemed necessary, RESPONDENTS deny generally and specifically the
allegations of paragraph nine.

10. Answering the allegations in paragraph ten, RESPONDENTS lack

1
2
3 sufficient information or knowledge to form a belief as to the truth of the matters asserted
4 therein, and on that basis deny the remaining allegations of paragraph ten.

5 **PRAYER FOR RELIEF**

6 RESPONDENTS state that the remaining portions of the First Amended Petition
7 comprise Sabbaghi's Prayer for Relief to which no admission or denial is required.
8 Insofar as a response may be deemed necessary, RESPONDENTS deny generally and
9 specifically each and every allegation contained in these remaining portions of the
10 Petition.

11 Moreover, RESPONDENTS deny generally and specifically each and every
12 allegation in the Petition for Review of Final Naturalization Denial which has not been
13 previously admitted or otherwise qualified.

14 **AFFIRMATIVE DEFENSES**

15 Further answering Sabbaghi's First Amended Petition, as defenses thereto,
16 Respondents allege as follows:

17 **FIRST AFFIRMATIVE DEFENSE**

18 The Petition fails to state a claim upon which relief can be granted. Fed. R. Civ.
19 P. 12(b)(6).

20 **SECOND AFFIRMATIVE DEFENSE**

21 This Court lacks jurisdiction to hear this case under at least one of Sabbaghi's
22 asserted grounds of jurisdiction. Fed. R. Civ. P. 12(b)(1).

23 **WHEREFORE**, having fully answered Sabbaghi's First Amended Petition and
24 having alleged certain affirmative defenses, Respondents pray that Sabbaghi's First
25 Amended Petition be dismissed with prejudice, that Sabbaghi take nothing by his
26 complaint, and that Respondents be allowed costs and such other and further relief as the
27 Court deems just and equitable.
28

1
2 DATED this 10th day of February, 2009.
3
4

5 Respectfully submitted,
6

7 MICHAEL F. HERTZ
8 Acting Assistant Attorney General
9 United States Department of Justice
10 Civil Division
11

12 JOSHUA E. BRAUNSTEIN
13 Assistant Director
14 Office of Immigration Litigation
15

16 /s/ Stacey I. Young
17 STACEY I. YOUNG
18 Trial Attorney
19 Office of Immigration Litigation
20 P.O. Box 868, Ben Franklin Station
21 Washington, D.C. 20044
22 Tel.: (202) 305-7171
23 Facsimile: (202) 305-7000
24 Email: stacey.young@usdoj.gov
25 ATTORNEYS FOR DEFENDANTS
26
27
28

Dated: February 10, 2009

1
2
3 **CERTIFICATE OF SERVICE**

4 Case No. C08-01641-PET

5 I hereby certify that on this 10th day of February, 2009, true and correct
6 copies of Defendants' ANSWER TO PETITIONER'S PETITION FOR REVIEW OF
7 FINAL NATURALIZATION DENIAL were served pursuant to the district court's ECF
system to the following ECF filer:

8 Bart Klein, Esq.
9 Law Office of Bart Klein
10 Seattle, WA 98104
11

12 /s/ Stacey I. Young
13 STACEY I. YOUNG
14 Trial Attorney
Office of Immigration Litigation
Civil Division
15 U.S. Department of Justice
16 P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
17
18
19
20
21
22
23
24
25
26
27
28